

JUL 24 1993

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-03322

COUNSEL: [REDACTED]

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His narrative reason for discharge, "Completion of Required Active Service" be changed to reflect a "Medical Retirement."

APPLICANT CONTENDS THAT:

He should have received a medical retirement from the Air Force. He now has a 30% disability rating from the Department of Veterans Affairs (DVA) effective the date of his discharge.

In support of his appeal, applicant attaches a copy of the DVA decision, dated 9 February 1996, and a copy of a medical examination for an annual flying/waiver, dated 27 May 1992.

Applicant's submission is attached at Exhibit A.

STATEMENT OF FACTS:

Applicant enlisted in the Regular Air Force on 3 November 1987 in the grade of airman basic for a period of six (6) years.

While applicant was serving in the grade of sergeant, a Medical Evaluation Board (MEB) convened on 24 March 1992 to consider the case on applicant for the purpose of continued active duty. After consideration of clinical records, laboratory findings, and physical examination, the Board established a diagnosis of "Ulcerative colitis - controlled" with an approximate date of origin of June 1991. The action recommended by the MEB was "Return to duty." Applicant's case was subsequently presented to an Informal Physical Evaluation Board (IPEB) which convened on 23 April 1992. The IPEB's diagnosis was "Ulcerative Colitis." The IPEB stated that the "Member's condition is currently well controlled and does not limit his ability to generally fulfill the demands of his rank and office. The PEB recommends member be returned to duty." On 4 May 1992, applicant agreed with the findings and recommended disposition of the PEB. On 4 May 1992, officials within the Office of the Secretary of the Air Force

determined applicant was physically fit for further military service and directed return to duty.

Applicant was subsequently honorably released from active duty on 2 November 1993 under the provisions of AFR 39-10 (Completion of Required Active Service) in the grade of sergeant (E-4). His reenlistment eligibility (RE) code was 1J which reflects: "Eligible to reenlist, but elects separation. (All airmen who are considered and selected for continued service under the Selective Reenlistment Program (SRP), who elect separation, are given RE code 1J)." He served 6 years of active military service. Applicant was transferred to the Air Force Reserve for completion of an obligated term of service. He was subsequently relieved from assignment, Headquarters Air Reserve Personnel Center and honorably discharged from the Air Force Reserve effective 20 April 1995.

AIR FORCE EVALUATION:

The Chief, Medical Consultant, BCMR, Medical Advisor SAF Personnel Council, states that applicant was disqualified from flying duties in July 1992 when a waiver application was rejected by Headquarters, Air Mobility Command Surgeon General (HQ AMC/SG), although his performance report through April 1993 shows he continued to perform his primary duties. Following discharge from the service, he has received disability compensation from the DVA and bases his request for records correction on this fact.

The reason why the applicant could be declared fit for duty by the Air Force and later be granted 30% service-connected disability by the DVA lies in understanding the differences between Title 10, USC and Title 38, USC. Title 10 USC, Chapter 61 is the federal statute that charges the Service Secretaries with maintaining a fit and vital force. For an individual to be considered unfit for military service, there must be a medical condition so severe that it prevents performance of any work commensurate with rank and experience. Once this determination is made, disability rating percentage is based upon the member's condition at the time of permanent disposition and not upon possible future events. Title 38, USC which governs the DVA compensation system was written to allow awarding compensation ratings for conditions that are not unfitting for military service.

Evidence of record established beyond all reasonable doubt that the applicant was medically qualified for continued active duty, that the reason for his separation was proper, and that no error or injustice occurred in this case. The Medical Consultant is of the opinion that no change in the records is warranted and the application should be denied.

A copy of the Air Force evaluation is attached at Exhibit C.

The Chief, Disability Operations Branch, USAF Physical Disability Division, HQ AFPC/DPPD, states that eligibility for disability processing is established by a Medical Evaluation Board (MEB) when that board finds that the member may not be qualified for continued military service. The decision to conduct an MEB is made by the medical treatment facility providing health care to the member. The applicant's medical records reflect that he was treated for other minor medical conditions while on active duty however, none were serious enough to render him unfit for further military service under the provisions of disability law and policy. The fact that a person may have a medical condition does not mean that the condition is unfitting for continued military service. To be unfitting, the condition must be such that it precludes the member from fulfilling the purpose for which he was employed. The medical aspects of this case are thoroughly and accurately explained by the Medical Consultant. They, AFPC/DPPD, fully agree with his comments and recommendations. Recommend denial of applicant's request.

A copy of the Air Force evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant, in his response to the Air Force evaluations, states in part, that he was disqualified from flying duties in July of 1992 when his waiver application was rejected by HQ AMC/SG. He was told that he would just continue in his desk duties as cargo load manager until his enlistment was up. Applicant alleges no other options like a medical cross-train or medical retirement were presented to him. Applicant states that it is his opinion that he was hustled out of the Air Force and not fully evaluated or his options explained to him because the force was reducing and they did not want to pay him a medical retirement. He alleges that his condition did not progress in severity, it was this severe when he was in the Air Force and it did alter his lifestyle.

A copy of the applicant's response, with attachments, is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After a thorough review of the evidence of record and applicant's submission, we are not persuaded that his narrative reason for discharge should be changed to a medical retirement. His contentions are duly noted; however, we do not find these assertions, in and by themselves, sufficiently persuasive to override the rationale provided by the Air Force. The **BCMR** Medical Consultant has adequately explained the reason why the applicant could be declared fit for duty by the Air Force and later be granted 30% service-connected disability by the DVA. We believe that the applicant is being compensated by the appropriate agency. We therefore agree with the recommendations of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice. Therefore, we find no compelling basis to recommend granting the relief sought.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 11 June 1998, under the provisions of AFI 36-2603.

Mr. Thomas S. Markiewicz, Panel Chair
Mr. Robert W. Zook, Member
Ms. Olga M. Crerar, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Dec 96, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, BCMR Medical Consultant, dated 27 May 97.
- Exhibit D. Letter, HQ AFPC/DPPD, dated 22 Jul 97.
- Exhibit E. Letter, AFBCMR, dated 11 Aug 97.
- Exhibit F. Applicant's Letter, dated 3 Oct 97, w/atchs.


THOMAS S. MARKIEWICZ
Panel Chair